

**ASSEMBLY BILL**

**No. 1393**

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**Introduced by Assembly Members Leno and Maze  
(Coauthor: Assembly Member Aghazarian)**

February 23, 2007

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An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3, 6257, and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1393, as introduced, Leno. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.

This bill would, as of January 1, 2009, require any state agency that publishes an Internet Web site to include on the homepage of that site specified information that is not exempt from disclosure under the act about how to contact the agency, how to request records under the act, and a form for submitting online requests for records. It would authorize any person to bring an action to enforce the duty of a state agency to post this information and would provide for penalties including monetary awards to be paid by the agency, with specified provisions to become operative on January 1, 2009.

The bill would also authorize a person to request the Attorney General to review a state or local agency's denial of a written request to inspect or receive a copy of a public record and would require the Attorney General to issue a written decision within 20 working days of the date the written request and written response or lack of response of an agency

is received by the Attorney General. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and to make them available on the Internet.

This bill would require the Department of Justice to convene an advisory task force with a specified membership, to consider specified issues with respect to a statutory standard governing the posting of certain activities under the act, and to report its findings and recommendations to the Governor and the Legislature by no later than September 30, 2008.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6253.3 is added to the Government Code,
- 2 to read:
- 3 6253.3. Every state agency that publishes an Internet Web site
- 4 shall include on the homepage of that site, prominently displayed
- 5 without scrolling, the words "Public Records Center," which shall
- 6 be followed by, or shall link to, on another page, both of the
- 7 following:
- 8 (a) Under the words "Whom to Contact," the title, mailing
- 9 address, telephone number, and e-mail address of the public
- 10 information officer or other person or persons to whom requests
- 11 for inspection or copying of records pursuant to the California
- 12 Public Records Act, or informal requests for simple factual
- 13 information, should be directed.
- 14 (b) (1) Under the words "How to Request Records," the written
- 15 guidelines authorized or required under subdivision (a) of Section
- 16 6253.4, and an HTML form for submitting online requests under
- 17 the California Public Records Act, consisting of all of the following
- 18 labeled fields:
- 19 (A) Today's date.
- 20 (B) My name (optional).
- 21 (C) My e-mail address (optional).
- 22 (D) My postal address (optional).
- 23 (E) My telephone number (optional).
- 24 (F) I am interested in the following records or information:
- 25 (G) Where can I inspect these records?

1 (H) Send me copies of the records.

2 (I) Send me a fee estimate before copying.

3 (2) The HTML form shall be designed to send a copy of the  
4 request immediately and automatically to the e-mail address listed  
5 on the HTML form, if an e-mail address is provided by the person  
6 submitting the form.

7 (c) This section shall become operative on January 1, 2009.

8 SEC. 2. Section 6257 is added to the Government Code, to  
9 read:

10 6257. (a) (1) A person may request the Attorney General to  
11 review a state or local agency's denial of a written request to  
12 inspect or receive a copy of a public record by delivering a copy  
13 of the request and the written response by the agency denying, in  
14 whole or in part, the request to the office of the Attorney General  
15 within 20 days of receipt of the agency's written denial. In the case  
16 of the failure of an agency to provide any response under Section  
17 6253 to a public records request within the time limits specified  
18 by this chapter, the person may seek review by the Attorney  
19 General by providing a copy of the request and the circumstances  
20 under which it was sent to the agency no less than 20 days and no  
21 more than 40 days after the request was delivered or mailed to the  
22 agency. The Attorney General may grant relief from the 40-day  
23 time limit upon a showing by the person seeking relief that he or  
24 she refrained from requesting review within the 40-day time limit  
25 because the person reasonably relied upon representations of the  
26 agency that a response would be forthcoming.

27 (2) The person seeking review shall demonstrate by means of  
28 written proof of service or other credible and reliable means that  
29 a copy of his or her request for review has been delivered to the  
30 denying agency. Within 20 working days of receipt of the request  
31 for review that complies with the requirements of this subdivision,  
32 the Attorney General shall issue a written opinion stating whether  
33 the agency's response or lack of response complied with this  
34 chapter.

35 (b) For good cause, the Attorney General may extend by 30  
36 working days the time to issue an opinion under this section by  
37 sending written notice to the complaining party and a copy to the  
38 denying agency stating the reasons for the extension and the day  
39 on which a decision is expected to be issued. As used in this  
40 section, "good cause" means any of the following:

1 (1) The need to obtain additional information from the agency  
2 or the requester.

3 (2) The need to conduct research on issues of first impression.

4 (3) An unmanageable workload.

5 (4) Unanticipated absence of staff assigned to a particular  
6 request, or similar unavoidable circumstance.

7 (c) The Attorney General may solicit additional information or  
8 explanation from the denying agency, including copies of the  
9 records claimed to be exempt, or a detailed explanation of the  
10 content of the information in those records. The denying agency  
11 may, within 10 working days from the date of receipt of the request  
12 pursuant to subdivision (a), submit any additional information or  
13 explanation it deems relevant. However, the records or other  
14 information for which an exemption is claimed shall not be  
15 provided except in response to a request by the Attorney General  
16 and shall not be disclosed by the Attorney General. The Attorney  
17 General shall return or destroy nondisclosable records received  
18 under this subdivision upon completion of the review and shall  
19 not use the records for any other purpose. The agency need not  
20 provide records or information but failure to do so without adequate  
21 justification under the circumstances of the case may be considered  
22 in assessing the sufficiency of the agency's written denial under  
23 review.

24 (d) If the Attorney General or the Department of Justice is the  
25 agency that is the subject of the public records request, the request  
26 for review under this section shall be treated as a request for  
27 reconsideration and, when possible, shall be reviewed by members  
28 of the Attorney General's office not involved in the original  
29 decision.

30 (e) Upon completion of the opinion pursuant to this section, the  
31 Attorney General shall immediately mail a copy of it to the person  
32 requesting review and to the state or local agency that denied access  
33 to the record in question.

34 (f) The Attorney General shall maintain copies of opinions  
35 issued pursuant to this section at each of his or her legal offices  
36 for purposes of public inspection. The Attorney General shall cause  
37 to be published annually a special volume of opinions issued under  
38 this section and shall make the opinions available on the Internet.  
39 The Attorney General may charge a fee for the sale of the volumes  
40 not to exceed the reasonable cost of publication and distribution.

1 (g) Notwithstanding any other provision of law, except when  
2 the records of the Attorney General or the Department of Justice  
3 are at issue, neither the Attorney General, nor the Department of  
4 Justice, nor any of its staff shall be subject to suit or to discovery  
5 in any suit for any action taken as a result of review under this  
6 section.

7 (h) An opinion issued under this section does not affect the right  
8 of a person to enforce his or her right to inspect or to receive a  
9 copy of any public record through an action pursuant to Sections  
10 6258 and 6259. A person shall not be required to exhaust the  
11 administrative remedies available in this section prior to filing a  
12 legal action. If a person elects to bring an action under Sections  
13 6258 and 6259, the Attorney General shall not proceed under this  
14 section. If a person elects to seek review under this section, no  
15 legal action may be brought against the agency whose decision is  
16 the subject of the opinion until 10 days after the issuance and  
17 mailing of the opinion. A person may withdraw, by written notice,  
18 his or her request for review under this section if the withdrawal  
19 notice is received by the Attorney General prior to the issuance of  
20 an opinion.

21 (i) (1) Representation of a state agency by the Attorney General  
22 involving advice as to a request for inspection or copies of public  
23 records may provide a basis for that agency to claim an  
24 attorney-client relationship that would preclude the Attorney  
25 General from providing an opinion under this section regarding  
26 that request.

27 (2) A state agency against which an action is brought pursuant  
28 to Sections 6258 and 6259, after a receipt of an adverse opinion  
29 under this section, is authorized to retain counsel other than the  
30 Attorney General.

31 (3) Except as provided in this section, the Attorney General's  
32 review under this section does not preclude the Attorney General's  
33 representation of the affected state agency on any matter.

34 (j) The time limits for the Attorney General to respond pursuant  
35 to subdivisions (a) and (b) are directory not mandatory.

36 (k) This section shall not apply to a request for public records  
37 made to a state agency by a party to a pending proceeding involving  
38 the state agency or an employee of the state agency, or a pending  
39 investigation by the state agency, if the Attorney General has

1 provided or is providing legal advice or representation to the state  
2 agency with regard to the proceeding or investigation.

3 SEC. 3. Section 6258 of the Government Code is amended to  
4 read:

5 6258. Any person may institute proceedings for injunctive or  
6 declarative relief or writ of mandate in any court of competent  
7 jurisdiction to enforce his or her right to inspect or to receive a  
8 copy of any public record or class of public records under this  
9 chapter, *or to enforce the duty of a state agency to post information*  
10 *in its office and on its Internet Web site, if any, in compliance with*  
11 *Section 6253.3.* The times for responsive pleadings and for hearings  
12 in these proceedings shall be set by the judge of the court with the  
13 object of securing a decision as to these matters at the earliest  
14 possible time.

15 SEC. 4. Section 6259 of the Government Code is amended to  
16 read:

17 6259. (a) Whenever it is made to appear by verified petition  
18 to the superior court of the county where the records or some part  
19 thereof are situated that certain public records are being improperly  
20 withheld from a member of the public, the court shall order the  
21 officer or person charged with withholding the records to disclose  
22 the public record or show cause why he or she should not do so.  
23 The court shall decide the case after examining the record in  
24 camera, if permitted by subdivision (b) of Section 915 of the  
25 Evidence Code, papers filed by the parties, and any oral argument  
26 and additional evidence as the court may allow.

27 (b) If the court finds that the public official's decision to refuse  
28 disclosure is not justified under Section 6254 or 6255, he or she  
29 shall order the public official to make the record public. If the  
30 judge determines that the public official was justified in refusing  
31 to make the record public, he or she shall return the item to the  
32 public official without disclosing its content with an order  
33 supporting the decision refusing disclosure.

34 (c) In an action filed on or after January 1, 1991, an order of  
35 the court, either directing disclosure by a public official or  
36 supporting the decision of the public official refusing disclosure,  
37 is not a final judgment or order within the meaning of Section  
38 904.1 of the Code of Civil Procedure from which an appeal may  
39 be taken, but shall be immediately reviewable by petition to the  
40 appellate court for the issuance of an extraordinary writ. Upon

entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within ~~such~~ any further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable ~~attorney~~ attorney's fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable ~~attorney~~ attorney's fees to the public agency.

(e) (1) If a state or local agency (A) declines to comply with a request to inspect or copy a record that is publicly accessible pursuant to this chapter; (B) delays in responding to the request, or in producing the requested records, for reasons that are unstated to the requester, or that are unsupported by compelling circumstances, or that otherwise demonstrate a lack of the diligence required to make records available promptly, without delay or obstruction, pursuant to the standards and deadlines of Section 6253; (C) imposes conditions precedent to access to records that are not authorized by this chapter, including, but not limited to, the payment of copy fees in excess of an applicable statutory fee or the direct cost of duplication pursuant to Section 6253 or 6253.9; or (D) otherwise frustrates timely and complete access; and the court determines that the agency acted in bad faith or with reckless disregard of the agency's obligations under this chapter, the court, in its discretion, may make an award not to exceed one hundred dollars (\$100) per day for each day, as determined by the court, that the agency's action resulted in the denial of the plaintiff's right to copy or inspect the record or records in question.

1     (2) *In determining the amount of an award under this*  
2 *subdivision, the court shall consider all the facts and circumstances*  
3 *surrounding the agency's decision, including, but not limited to,*  
4 *all of the following:*

5     (A) *Whether the agency unreasonably failed to respond within*  
6 *the time periods set forth in Section 6253 or otherwise engaged*  
7 *in conduct that caused undue delay.*

8     (B) *Whether the agency's justification for denying the request*  
9 *was reasonably based upon its perceived obligation to protect the*  
10 *rights of persons or entities identified in the requested records.*

11     (C) *Whether the agency has developed publicly accessible*  
12 *internal operating procedures or guidelines under Section 6253.4.*

13     (D) *Whether the plaintiff acted in good faith in pursuing the*  
14 *request.*

15     (E) *Whether the agency's denial or other conduct inconsistent*  
16 *with this chapter was based on a reasonable interpretation of the*  
17 *law.*

18     (f) *An award pursuant to this section shall not exceed a total of*  
19 *ten thousand dollars (\$10,000) for the record or records in*  
20 *question.*

21     SEC. 5. Section 6259.1 is added to the Government Code, to  
22 read:

23     6259.1. (a) Whenever it is made to appear by verified petition  
24 to the superior court of the county wherein the plaintiff resides  
25 that a state agency has failed to comply with the requirements of  
26 Section 6253.3, the court shall order the officer or person charged  
27 with posting the information as required by that section, or if no  
28 such person has been appointed, the senior officer in the agency,  
29 to effectuate compliance forthwith or show cause why he or she  
30 should not do so. The court shall decide the case after examining  
31 papers filed by the parties and any oral argument and additional  
32 evidence as the court may allow.

33     (b) If the court finds that the agency has failed to comply with  
34 Section 6253.3, he or she shall order the officer or person ordered  
35 to show cause to effectuate compliance forthwith.

36     (c) Upon entry of any order pursuant to this section, a party  
37 shall, in order to obtain review of the order, file a petition within  
38 20 days after service upon him or her of a written notice of entry  
39 of the order, or within any further time not exceeding an additional  
40 20 days as the trial court may for good cause allow. If the notice



1 is served by mail, the period within which to file the petition shall  
2 be increased by five days. A stay of an order or judgment shall not  
3 be granted unless the petitioning party demonstrates that it will  
4 otherwise sustain irreparable damage and probable success on the  
5 merits. Any person who fails to obey the order of the court shall  
6 be cited to show cause why he or she is not in contempt of court.

7 (d) If the plaintiff prevails in an action filed pursuant to this  
8 section, the court shall award court and discovery costs and  
9 reasonable attorney's fees to the plaintiff. The costs and fees shall  
10 be paid by the state agency of which the public official is a member  
11 or employee and shall not become a personal liability of the public  
12 official. If the court finds that the plaintiff's case is clearly  
13 frivolous, it shall award court costs and reasonable attorney's fees  
14 to the agency.

15 (e) This section shall become operative on January 1, 2009.

16 SEC. 6. (a) The Department of Justice shall convene an  
17 advisory task force to consider and make recommendations for a  
18 statutory standard governing the posting of requests and denials,  
19 and public documents that are subject to disclosure, under the  
20 California Public Records Act (Chapter 3.5 (commencing with  
21 Section 6250) of Division 7 of Title 1 of the Government Code),  
22 on the Internet Web sites of state agencies.

23 (b) Members of the task force shall include all of the following:

24 (1) State agency or board representatives.

25 (2) Representatives of the Department of Information  
26 Technology.

27 (3) Representatives of organizations with expertise in technical  
28 policy and practices of Internet disclosure.

29 (4) Representatives of organizations with expertise in privacy  
30 policy relevant to Internet disclosure.

31 (5) Representatives of organizations with expertise in fostering  
32 public integrity and accountability.

33 (6) Representatives of organizations with expertise in informed  
34 electoral participation.

35 (7) Representatives of organizations with expertise in  
36 investigative journalism.

37 (8) Representatives of legislative staff, at the option of the  
38 applicable legislative oversight entities, and to the extent not in  
39 conflict with their legislative duties.

1 (c) The task force shall consider at least all of the following  
2 issues:

3 (1) Whether it is of greater value to the public for state agencies  
4 to automatically post, with appropriate security and privacy  
5 controls, certain public records that are subject to disclosure under  
6 the act on agency Internet Web sites rather than making those  
7 records available to requesters on a request-only basis. Specific  
8 consideration shall be given to records that relate to the  
9 compensation and economic interests of key public officials and  
10 consultants, and the performance of public agencies, including,  
11 but not limited to, the settlement of litigation. Specific  
12 consideration should also be given to what specific advantages or  
13 disadvantages may be associated with an affirmative Internet  
14 posting requirement.

15 (2) Whether eventual cost savings or increases in efficiency, or  
16 both, are likely to offset the implementation and management costs  
17 of requiring state agencies to automatically post disclosable public  
18 records on their Internet Web sites, and whether certain types of  
19 public records are better suited to automatic disclosure based on  
20 these cost and efficiency considerations.

21 (3) Whether appropriate security measures are available, and  
22 cost effective, to ensure that the personal or proprietary information  
23 contained in a public record that is posted on the Internet is  
24 protected from the possibility of identity theft or other forms of  
25 misuse.

26 (4) Whether appropriate security measures are available, and  
27 cost effective, to ensure that disclosable public records posted on  
28 the Internet are protected from alteration by third parties or other  
29 forms of misuse.

30 (5) Other issues that might arise from a statutory requirement  
31 that certain public records be automatically posted on agency  
32 Internet Web sites.

33 (d) The task force shall report its findings and recommendations  
34 to the Governor and the Legislature by no later than September  
35 30, 2008, at which time it shall cease to exist.